CORRESPONDENCE.

THE RIGHTS OF RATS AS DEFENDANTS.

Editor Virginia Law Register:

One of the most curious and interesting features of ecclesiastical law in the Middle Ages was the perversion of the right of excommunication into a ban or curse inflicted on animals, and even inanimate objects. A curious instance of the trial of certain rats, and of the questions of procedure involved therein, is recorded in De Thou's History of Universal Liberty, as quoted by Lea in his Studies in Church History, p. 430, as follows:

"As the canons, however constantly violated, forbade the expulsion of a Christian without a formal trial, so, as civilization advanced, it began to be thought an unfair advantage was taken of the dumb creatures of God by condemning them unheard, and the practice arose of offering them the opportunity of defence before the ecclesiastical courts, prior to pronouncing the dreadful sentence against them. Perhaps the best known of these curious proceedings was that by which the distinguished lawyer, Bartholomew Chassenée, in 1510, made the reputation which subsequently elevated him to the post of Premier President of the Parliament of Aix. The country around Antrim being intolerably infested with rats, whose numbers resisted all ordinary means of extermination, the inhabitants applied to the bishop to have the vermin regularly excommunicated. The episcopal court nominated Chassenée to appear as counsel for the rats, in consequence of his having shortly before printed a consultation of vast erudition on trials of that kind. He accordingly undertook the defence, and proved that the rats had not been properly summoned to appear, and the trial went over until a formal citation of the defendants was published by the priests of all the parishes in the infested district. He then moved for a longer delay, alleging that the time allowed the rats to put in an appearance was too short, in view of the danger incurred through reason of the cats, which barred all access to the court; and his learned argument on the point gained an additional postponement."

The final result of the trial is not stated; but the rats were undoubtedly duly excommunicated according to the custom of the time, and were, perhaps, soon after found dead and dying, unable to survive the ignominy of the ban of mother church.

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WEST VIRGINIA'S DEBT AND THE SUPREME COURT.

Editor Virginia Law Register:

First. According to correct doctrine, the holder of a Virginia bond has no demand on West Virginia. The ordinance of 1861, dividing Virginia, proceeded on the theory that Virginia owed the entire debt. The purpose of the ordinance was to establish the rule by which to ascertain the amount West Virginia should pay to Virginia. This arrangement between the two States did not affect the rights of creditors. The Virginia constitution proceeded on this theory and pro-

vided that "such sum as shall be received from West Virginia shall be applied to the payment of the public debt of the State."

Second. The preamble of the act of 1871 made a departure from this theory by stating that "it is suggested that West Virginia may prefer to pay that State's portion to the holders thereof, now to enable West Virginia to settle her proportion with the holders thereof, it is enacted," etc. But the certificates, issued under this act, make a departure from the preamble. The certificates read: "Payment will be provided for in accordance with such settlement as shall be had between Virginia and West Virginia."

This act was an arrangement between Virginia and such holders as surrendered their bonds for funding. It did not effect West Virginia, and did not effect those who did not accept its terms. So far as either State is concerned, the certificates represent a debt which has not been adjusted.

Third. There exists a "controversy" between the two States in this: If there had been no stipulation about West Virginia's part, then it would be determined by the relative population and territory of the two sections, and, on this basis, would be about one-third. There seems to be a "controversy" as to whether the ordinance is binding on both States. Waiving this question, and referring to *West Virginia* v. *Virginia*, 11 Wallace, it is sufficient for this paper to consider one of many questions to be decided before the account required by the ordinance can be stated, to-wit: The ordinance provides that West Virginia shall be charged with a just proportion of the ordinary expenses of the State government and credited with the taxes collected within her limits. The question is, what proportion was a "just" proportion for that section formed into West Virginia? This question is difficult because outside of the beaten paths. West Virginia contends that her taxes very largely exceeded her "just" proportion.

Fourth. But the United States own $580,000 of the bonds of the original State, and as to them Virginia claims to offset a debt due her by the government. The United States acquired these bonds as follows: In 1860 the Secretary of the Interior, as trustee for certain Indians, invested their money in State bonds. After they had been defaulted many years, Congress enacted that the Indians be paid and the title to the bonds vested in the government.

The constitution provides that, "the judicial power . . . shall extend to controversies to which the United States shall be a party: to controversies between two or more States." If the government brings suit, the court, following *New Hampshire* v. *Louisiana*, 108 U. S., may refuse to take jurisdiction. But if the court does take jurisdiction, only these particular bonds would be involved. No other creditor could be heard. It is true Virginia may interplead West Virginia, and claim that she contribute to pay this $580,000. It is also true that, if Virginia summons West Virginia, the court may state the account, required to ascertain West Virginia's proportion. But the outcome could not be otherwise than as follows. The court would decide: (a) That the Virginia debt in 1861 was (say) $31,000,000, and (b) That a statement of the account, required by the ordinance, fixed on West Virginia (say) $5,000,000. Hence, West Virginia must pay 5-31 of this $580,000, and Virginia pay the balance. The decision would necessarily stop here, unless Virginia asked for a decree in her favor against West Virginia, and this she would never do because she could have no certainty either that

West Virginia will make payment, or that the $15,500,000 certificates would be surrendered in exchange for what was received from West Virginia.

It is true, there would be a judicial ascertainment of the amount of West Virginia's proportion, but the decree being limited to these $580,000 old bonds the court could not consider any question about the payment of the debt represented by the certificates.

This subject is of present interest because it will be discussed as soon as Virginia has opportunity to ask Congress to repeal the law, authorizing suit, which was surreptitiously passed last March.

A brief enactment will set this matter straight. Let the Secretary of the Treasury be instructed, (1) To surrender these old bonds to Virginia for funding under the act of 1892. If explanation be made, Congress will be unanimous that the government ought to accept the same terms that were accepted by the holders of the other twenty-eight million of old bonds. (2) To hold the new bonds which Virginia will issue, until a committee or the court of claims passes on the offset claimed by the State. (3) To sell the West Virginia certificates, which will be issued, at auction. It would work out about thus: Two-thirds of $580,000 at 60 per cent. would give $232,000; two-thirds of the interest from 1861 to 1891, at 30½ per cent. would give $210,540. Hence, Virginia would issue $442,540 of her two per cent. bonds, to be held subject to the offset. She would also issue a West Virginia certificate for $634,133, which the government would sell at auction.

Charles Town, W. Va., July 1, 1899. J. M. MASON.